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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary**Application No.**

10/773,894

Applicant(s)

EDMONDSON ET AL.

Examiner

FREDA A. NELSON

Art Unit

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 5-15, and 18-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5-15, and 18-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The amendments received on 31 October 2011 is acknowledged and entered. Claims 1 and 15 have been amended. Claims 2-4 and 16-17 have been canceled. No claims have been added. Claims 1, 5-15 and 18-24 are currently pending.

Response to Amendments and Arguments

1. Applicant's arguments filed November 4th and 23rd of 2010 have been fully considered but they are not persuasive.
2. Applicant's amendments filed November 4th and 23rd of 2010 with respect to the rejection of claims 1, 5-14, and 21-22 under 35 U.S.C. 101, have been fully considered and are persuasive. Thus, the rejection under 35 U.S. C. 101 is withdrawn.
3. In response to Applicant's argument that in regards to claims 1 and 15, *Eglen et al.*, in view of *Ballou, Jr. et al.* in view of *Seki et al.* does not disclose a categorized value based on sales history of other content files of the content creator and further does not disclose that the initial price is set based on the categorized value; the required initial price indicia associator adapted to receive content indicia associated with each of the first and at least second content files stored at the content creator database; and storage in a content creator database of an indexing of a content creator to a historical indicium, the Examiner notes that Vig discloses the essential steps of the present invention appraisal method include: (1) providing an appraisal structure of a multiplicity of "value-affecting" factors that affect the price of an artwork, where each factor is further divided into a plurality of levels each assigned a relative percentage

rate; (2) establishing a database of all known artworks of all known artists, including each artist's personal information, prior sales information such price and raw data for each value-affecting factor, and individual circumstances that also affect the prices of the artist's artworks; (3) creating an imaginary "Normal" artwork by each artist which has a "normal" price and a "normal" point corresponding to each value-affecting factor; (4) obtaining from a user the information of a "Target" artwork, which is the artwork that needs to be appraised, where the information is arranged according to the value-affecting factors; (5) calculating the predicted price of the "Target" artwork, based on the information of the target artwork and the information of the same artist's "normal" artwork, individual circumstances, and other environmental circumstances; and (6) after an artist's artwork is sold, updating the database for that artist, including re-calculating the "normal" price and other "normal" points of the artist's "normal" artwork (col. 3, line 49- col. 4, line 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Eglén et al. to include the ability to categorize artist and arrange data in a database according to the artists prior sales information as well as circumstances that affect the prices of artwork in order to calculate an initial/target sales price since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

4. In response to Applicant's argument that in regards to claims 5-14 and 18-24, the dependent claims are believed to be allowable based on their dependency on claims 1

and 15, the Examiner respectfully disagrees for reasons stated above regarding the rejection of claims 1 and 15 above.

5.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 1, 5-14, and 21-24** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Eglen et al.* (US PG Pub. 2003/0023505), in view of *Vig* (US Patent No. 5,911,131).

7. **As per claim 1**, *Eglen et al.* disclose an apparatus for associating a price indicia with each of the first content tile and at least a second content file stored at a content database of a content distribution facility, each of the first and at least second content files authored by first and second content creators, respectively, said apparatus comprising:

a computer server having memory and processing circuitry that executes computer readable program code stored at said memory and configured:

to form a content creator database, said content creator database configured to form and store in said memory a listing formed of entries that identify at least first and second content creators indexed together with historical indicia associated-with said first and second content creators respectively (paragraphs [0060],[0063],[0065]).

to form an initial price indicia associator adapted to receive content indicia associated with each of the first and at least second content files stored at the content creator database and adapted to access said content creator database, said initial price indicia associator configured to initially price each of the first and at least second content files with initial price indicia (paragraphs, [0058]-[0060],[0063]-[0064] popular music,[0081],[0122]-[0123],[0136]; see FIG. 3) {the music databases 230 can store the file name of a song, the location of the file on the home music server 220, song title, artist, author, producer, distributor (label), album name, album picture, picture of the artist, musical category (i.e. rock, jazz . . .), description, comments, *pricing information*, *demand information*, and/or length/size of the song along with other information relating to the song};

to form a price indicia adjuster adapted to receive indications of the initial price indicia that said initial price indicia associator associates with each of the first and at least second content files and to receive indications of demand for each of the first and at least second content files, said price indicia adjuster configured to adjust the initial price indicia responsive to the demand therefor, the demand data based, at least in part, upon indications of inquiries of availability, and for forming adjusted price indicia associated with each of the first and at least second content files (abstract; paragraphs [0058],[0073],[0099], [0122]).

Eglen et al. does not explicitly disclose said historical indicia comprising a categorized value representative of a category group into which the first content creator is categorized dependent upon a sales history of another content file authored by the

first content creator and into which the second content creator is categorized dependent upon a sales history of another content file authored by the second content creator; and the initial price indicia of the first content file being based on the categorized value identifying the category group into which the first content creator of said first content file is categorized.

Vig discloses the essential steps of the present invention appraisal method include: (1) providing an appraisal structure of a multiplicity of "value-affecting" factors that affect the price of an artwork, where each factor is further divided into a plurality of levels each assigned a relative percentage rate; (2) establishing a database of all known artworks of all known artists, *including each artist's personal information, prior sales information such price and raw data for each value-affecting factor, and individual circumstances that also affect the prices of the artist's artworks*; (3) creating an imaginary "Normal" artwork by each artist which has a "normal" price and a "normal" point corresponding to each value-affecting factor; (4) obtaining from a user the information of a "Target" artwork, which is the artwork that needs to be appraised, where the information is arranged according to the value-affecting factors; (5) *calculating the predicted price of the "Target" artwork, based on the information of the target artwork and the information of the same artist's "normal" artwork, individual circumstances, and other environmental circumstances*; and (6) after an artist's artwork is sold, updating the database for that artist, including re-calculating the "normal" price and other "normal" points of the artist's "normal" artwork (col. 3, line 49- col. 4, line 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the

invention was made to modify the invention of *Eglen et al.* to include the ability to categorize artist and arrange data in a database according to the artists prior sales information as well as circumstances that affect the prices of artwork as taught by *Vig* in order to calculate an initial/target sales price since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

8. **As per claim 5**, *Eglen et al.* in view of *Vig* discloses the apparatus of claim 1. *Eglen et al.* further discloses wherein the initial price indicia with which said initial price indicia associator associates with the first and at least second content files is further directly related, at least in a stepwise manner, with the historical demand (paragraphs [0064],[0123]) {pricing algorithm parameters field 352 can store information such as the historical pricing and quantity ordered information for the item; and alternatively or additionally, the dynamic pricing system 102 in this and other embodiments can automatically set the initial price based on default prices and/or historical prices for similar content stored in memory 112}.

9. **As per claim 6**, *Eglen et al.* in view of *Vig* discloses the apparatus of claim 1. *Eglen et al.* further discloses wherein the historical indicia indexed together with the content creator at the author index formed at said content creator database categorizes the historical demand into a first historical demand level at least a second historical

demand level (paragraphs [0064],[0123]) {pricing algorithm parameters field 352 can store information such as the historical pricing and quantity ordered information for the item; and alternatively or additionally, the dynamic pricing system 102 in this and other embodiments can automatically set the initial price based on default prices and/or historical prices for similar content stored in memory 112}.

10. **As per claim 7**, *Eglen et al.* in view of *Vig* discloses the apparatus of claim 1. *Eglen et al.* further discloses wherein the first content file and the at least the second content file stored at the content database is at least selectably available for delivery to content consumers and wherein the indications of the demand to which said price indicia adjuster is adapted to receive further comprise_ indications related to inquiries relating to individual ones of the first and at least second content files (paragraphs [0052],[0058]).

11. **As per claim 8**, *Eglen et al.* in view of *Vig* discloses the apparatus of claim 7. *Eglen et al.* further discloses wherein copies of the first and at least second content files are at least selectably available for purchase by the content consumers and wherein the inquiries selecting to the individual ones of the first and at least second content files comprise inquiries relating to purchase of copies of the individual ones of the first and at least second content files (paragraphs [0052],[0058]).

12. **As per claim 9**, *Eglen et al.* in view of *Vig* discloses the apparatus of claim 8. *Eglen et al.* further discloses wherein the inquiries relating to the purchase of the copies of the individual ones of the first and at least second content files comprise indications of purchase requests made by the content consumers (paragraph [0122]) {the dynamic price modifier increases the price of an item when demand for that item increases and reduces the price of an item when the demand for the item decreases and in one form, the dynamic pricing modifier is based on the differences between the quantity ordered at specific intervals wherein, for instance, these intervals can be by second, by minute, hourly, daily, monthly, or yearly; and in another form, the dynamic pricing modifier is based on the time between successive purchases; for example, if the time delay between successive purchases decreases, the dynamic pricing system 102 can infer that demand is increasing and thus increase the price for the item}.

13. **As per claim 10**, *Eglen et al.* in view of *Vig* discloses the apparatus of claim 8. *Eglen et al.* further discloses wherein the inquiries relating to the purchase of the copies of the individual ones of the first and at least second content files comprise indications of purchase completions made by the content consumers (paragraph [0122]) {the dynamic price modifier increases the price of an item when demand for that item increases and reduces the price of an item when the demand for the item decreases and in one form, the dynamic pricing modifier is based on the differences between the quantity ordered at specific intervals wherein, for instance, these intervals

can be by second, by minute, hourly, daily, monthly, or yearly; and in another form, the dynamic pricing modifier is based on the time between successive purchases; for example, if the time delay between successive purchases decreases, the dynamic pricing system 102 can infer that demand is increasing and thus increase the price for the item}.

14. **As per claim 11**, *Eglen et al.* in view of *Vig* discloses the apparatus of claim 1. *Eglen et al.* further discloses wherein said price indicia adjuster is adapted to interactively adjust the adjusted price indicia associated with each of the first and at least second content files (paragraph [0122]) {the dynamic price modifier increases the price of an item when demand for that item increases and reduces the price of an item when the demand for the item decreases and in one form, the dynamic pricing modifier is based on the differences between the quantity ordered at specific intervals wherein, for instance, these intervals can be by second, by minute, hourly, daily, monthly, or yearly; and in another form, the dynamic pricing modifier is based on the time between successive purchases; for example, if the time delay between successive purchases decreases, the dynamic pricing system 102 can infer that demand is increasing and thus increase the price for the item}.

15. **As per claim 12**, *Eglen et al.* in view of *Vig* discloses the apparatus of claim 1. *Eglen et al.* further discloses wherein the indications of demand to which said price indicia adjuster is adapted to receive are applied to said price indicia adjuster at least at

successive intervals, dynamically to receive the indications of the demand, and wherein said price indicia adjuster is adapted to further successively form the adjusted price indicia responsive to the indications of the demand received at the at least the successive intervals (paragraph [0122]){the dynamic price modifier increases the price of an item when demand for that item increases and reduces the price of an item when the demand for the item decreases and in one form, the dynamic pricing modifier is based on the differences between the quantity ordered at specific intervals wherein, for instance, these intervals can be by second, by minute, hourly, daily, monthly, or yearly; and in another form, the dynamic pricing modifier is based on the time between successive purchases; for example, if the time delay between successive purchases decreases, the dynamic pricing system 102 can infer that demand is increasing and thus increase the price for the item}.

16. **As per claim 13**, *Eglen et al.* in view of *Vig* discloses the apparatus of claim 12. *Eglen et al.* further discloses wherein the adjusted price indicia formed by said price indicia adjuster formed at least at the successive intervals is adapted to incrementally change prior-formed values of the adjusted price indicia (paragraph [0122]){the dynamic price modifier increases the price of an item when demand for that item increases and reduces the price of an item when the demand for the item decreases and in one form, the dynamic pricing modifier is based on the differences between the quantity ordered at specific intervals wherein, for instance, these intervals can be by second, by minute, hourly, daily, monthly, or yearly; and in another form, the dynamic pricing modifier is

based on the time between successive purchases; for example, if the time delay between successive purchases decreases, the dynamic pricing system 102 can infer that demand is increasing and thus increase the price for the item}..

17. **As per claim 14**, *Eglen et al.* in view of *Vig* discloses the apparatus of claim 1. *Eglen et al.* further discloses a revenue allocator adapted to receive the indications of demand, said revenue allocator for allocating revenues associated with the first and at least second content files (paragraph 0158; FIG. 30E and FIG. 31) {the owner of the dynamic pricing system 102 generates revenue by receiving a portion of the revenue generated by the sale of items on the dynamic pricing system 102}.

18. **As per claim 15**, *Eglen et al.* discloses a computer program product comprising non-transitory computer readable storage medium, said computer program for distributing content stored at a content database, the content formed of a first content file and at least a second content file, the first and at least second content files authored by first and second content creators, said method for associating a price indicia with each of the first and at least second content files stored at the content database, said computer program product comprising:

computer readable program code embodied at the non-transitory computer readable storage medium for associating historical indicia with the first and second content creators, the historical indicia including a categorized value, the categorized

value identifying a category group into which a respective content creator is categorized (paragraphs [0052],[0060],[0063]-[0065]);

computer readable program code embodied at the non-transitory computer readable storage medium for initially pricing each of the first and at least second content files with initial price indicia of the first content file of the respective content creators of each of the first and at least second content files (paragraphs, [0059]-[0060],[0063]-[0064],[0081],[0122]-[0123],[0136]; see FIG. 3); and

computer readable program code embodied at the non-transitory computer readable storage medium for adjusting the initial price indicia with which the first and at least second content files are initially priced during said operation of initially pricing responsive to indications of demand for each of the first and at least second content files, the demand based, at least in part, upon indications of inquiries of availability of the first and second content files, respectively, to form adjusted price indicia associated with each of the first and at least second content files (abstract; paragraphs [0052],[0058], [0099],[0122]).

Eglen et al. does not explicitly disclose said historical indicia comprising a categorized value representative of a category group into which the first content creator is categorized dependent upon a sales history of another content file authored by the first content creator and into which the second content creator is categorized dependent upon a sales history of another content file authored by the second content creator; and the initial price indicia of the first content file being based on the categorized value

identifying the category group into which the first content creator of said first content file is categorized.

Vig discloses the essential steps of the present invention appraisal method include: (1) providing an appraisal structure of a multiplicity of "value-affecting" factors that affect the price of an artwork, where each factor is further divided into a plurality of levels each assigned a relative percentage rate; (2) establishing a database of all known artworks of all known artists, *including each artist's personal information, prior sales information such price and raw data for each value-affecting factor, and individual circumstances that also affect the prices of the artist's artworks*; (3) creating an imaginary "Normal" artwork by each artist which has a "normal" price and a "normal" point corresponding to each value-affecting factor; (4) obtaining from a user the information of a "Target" artwork, which is the artwork that needs to be appraised, where the information is arranged according to the value-affecting factors; (5) *calculating the predicted price of the "Target" artwork, based on the information of the target artwork and the information of the same artist's "normal" artwork, individual circumstances, and other environmental circumstances*; and (6) after an artist's artwork is sold, updating the database for that artist, including re-calculating the "normal" price and other "normal" points of the artist's "normal" artwork (col. 3, line 49- col. 4, line 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of *Eglen et al.* to include the ability to categorize artist and arrange data in a database according to the artists prior sales information as well as circumstances that affect the prices of artwork as taught by *Vig* in

order to calculate an initial/target sales price since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

19. **As per claim 18**, *Eglen et al.* in view of *Vig* discloses computer program product of claim 15. *Eglen et al.* further discloses wherein copies of the first content file and the at least the second content file each are at least selectably available for delivery to content consumers and wherein the indications of the demand for each of the first and at least second content files comprise indications of requests made by the content consumers comprise indications related to at least requests for copies of selected ones of the first and at least second content files (paragraphs [0052],[0058]).

20. **As per claim 19**, *Eglen et al.* in view of *Vig* discloses computer program product of claim 15. *Eglen et al.* further discloses wherein said operation of adjusting the initial price indicia further comprises adjusting the adjusted price indicia (paragraph [0060]) {the music databases 230 can store the file name of a song, the location of the file on the home music server 220, song title, artist, author, producer, distributor (label), album name, album picture, picture of the artist, musical category (i.e. rock, jazz . . .), description, comments, pricing information, demand information, and/or length/size of the song along with other information relating to the song}.

21. **As per claim 20**, *Eglen et al.* in view of *Vig* discloses computer program product of claim 15. *Eglen et al.* further discloses wherein adjustments to the adjusted price indicia during said operation of adjusting are performed incrementally (paragraph [0122]){the dynamic price modifier increases the price of an item when demand for that item increases and reduces the price of an item when the demand for the item decreases and in one form, the dynamic pricing modifier is based on the differences between the quantity ordered at specific intervals wherein, for instance, these intervals can be by second, by minute, hourly, daily, monthly, or yearly; and in another form, the dynamic pricing modifier is based on the time between successive purchases; for example, if the time delay between successive purchases decreases, the dynamic pricing system 102 can infer that demand is increasing and thus increase the price for the item}..

22. **As per claim 21**, *Eglen et al.* in view of *Vig* discloses computer program product of claim 15. *Eglen et al.* further discloses wherein the initial price indicia formed is adjusted based on the delivery mechanism by which content is delivered to a respective content consumer ([0050],[0162]).

23. **As per claim 22**, *Eglen et al.* in view of *Vig* discloses the apparatus of claim 1. *Eglen et al.* further discloses wherein the initial price indicia formed is adjusted based on whether a respective content consumer is a commercial content consumer or a non-commercial content consumer (paragraphs [0099],[0133],[0155]).

24. **As per claim 23**, *Eglen et al.* in view of *Vig* discloses computer program product of claim 15. *Eglen et al.* further discloses wherein the operation of initially pricing further comprises initially pricing each of the first and at least second content files responsive also to the delivery mechanism by which content is delivered to a respective content consumer ([0050],[0162]).

25. **As per claim 24**, *Eglen et al.* in view of *Vig* discloses computer program product of claim 15. *Eglen et al.* further discloses wherein the operation of initially pricing further comprises initially pricing each of the first and at least second content files responsive to whether a respective content consumer is a commercial content consumer or a non-commercial content consumer (paragraphs [0099],[0133],[0155]).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1) Harmon, Amy; "MUSIC; What Price Music?", October 12, 2003; The New York Times, 5 pages.

26. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDA A. NELSON whose telephone number is (571)272-7076. The examiner can normally be reached on Monday-Friday, 10:00 am - 6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/F. A. N./

Examiner, Art Unit 3628

/JOHN W HAYES/

Supervisory Patent Examiner, Art Unit 3628